S T A T E O F N E W Y O R K

7174--A

I N S E N A T E

May 1, 2012

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to providing accidental disability retirement benefits for chief fire marshals, assistant fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The retirement and social security law is amended by adding a new section 605-d to read as follows:

S 605-D. ACCIDENTAL DISABILITY RETIREMENT FOR CHIEF FIRE MARSHALS, ASSISTANT FIRE MARSHALS, DIVISION SUPERVISING FIRE MARSHALS, SUPERVISING FIRE MARSHALS, FIRE MARSHALS AND FIRE MARSHAL TRAINEES. A. A MEMBER EMPLOYED AS A CHIEF FIRE MARSHAL, ASSISTANT FIRE MARSHAL, DIVISION SUPERVISING FIRE MARSHAL, SUPERVISING FIRE MARSHAL, FIRE MARSHAL OR FIRE MARSHAL TRAINEE SHALL BE ENTITLED TO AN ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE IF, AT THE TIME APPLICATION THEREFOR IS FILED, SUCH MEMBER IS:

1. PHYSICALLY OR MENTALLY INCAPACITATED FOR PERFORMANCE OF DUTY AS THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE, NOT CAUSED BY HIS OWN WILLFUL NEGLIGENCE, SUSTAINED IN SUCH SERVICE AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM; AND

2. ACTUALLY IN SERVICE UPON WHICH HIS OR HER MEMBERSHIP IS BASED. HOWEVER, IN A CASE WHERE A MEMBER IS DISCONTINUED FROM SERVICE SUBSEQUENT TO THE ACCIDENT, EITHER VOLUNTARILY OR INVOLUNTARILY, AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF PARAGRAPH ONE OF THIS SUBDIVISION, APPLICATION MAY BE MADE EITHER (A) BY A VESTED MEMBER INCAPACITATED AS THE RESULT OF A QUALIFYING WORLD TRADE CENTER CONDITION AS DEFINED IN SECTION TWO OF THIS CHAPTER AT ANY TIME, OR (B) NOT LATER THAN TWO YEARS AFTER THE MEMBER IS FIRST DISCONTINUED FROM SERVICE.

B. APPLICATION FOR AN ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE FOR SUCH A MEMBER MAY BE MADE BY:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD15351-03-2

1. SUCH MEMBER; OR
2. THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED; OR
3. ANY PERSON ACTING ON BEHALF OF AND AUTHORIZED BY SUCH MEMBER.

C. 1. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. NO SUCH APPLICATION SHALL BE APPROVED, HOWEVER, UNLESS THE MEMBER OR SOME OTHER PERSON ON HIS BEHALF SHALL HAVE FILED WRITTEN NOTICE IN THE OFFICE OF THE COMPTROLLER WITHIN NINETY DAYS AFTER THE ACCIDENT, SETTING FORTH:

(A) THE TIME WHEN AND THE PLACE WHERE SUCH ACCIDENT OCCURRED; AND
(B) THE PARTICULARS THEREOF; AND
(C) THE NATURE AND EXTENT OF THE MEMBER'S INJURIES; AND
(D) HIS OR HER ALLEGED INCAPACITY.

2. THE NOTICE HEREIN REQUIRED NEED NOT BE GIVEN:

(A) IF THE NOTICE OF SUCH ACCIDENT SHALL BE FILED IN ACCORDANCE WITH THE PROVISIONS OF THE WORKERS' COMPENSATION LAW OF ANY STATE WITHIN WHICH A PARTICIPATING EMPLOYER SHALL HAVE ITS EMPLOYEES LOCATED OR PERFORMING FUNCTIONS AND DUTIES WITHIN THE NORMAL SCOPE OF THEIR EMPLOYMENT; OR

(B) IF THE APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT IS FILED WITHIN ONE YEAR AFTER THE DATE OF SUCH ACCIDENT; OR

(C) IF A FAILURE TO FILE NOTICE HAS BEEN EXCUSED FOR GOOD CAUSE SHOWN AS PROVIDED BY RULES AND REGULATIONS PROMULGATED BY THE COMPTROLLER.

D. IF THE COMPTROLLER DETERMINES THAT THE MEMBER IS PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED FOR ACCIDENTAL DISABILITY, SUCH MEMBER SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMPTROLLER.

E. THE ANNUAL RETIREMENT ALLOWANCE PAYABLE UPON ACCIDENTAL DISABILITY RETIREMENT SHALL BE A PENSION OF THREE-QUARTERS OF HIS FINAL AVERAGE SALARY. THE PAYMENT OF SUCH PENSION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

F. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER THE PROVISIONS OF SUBDIVISION B OF THIS SECTION, IS ELIGIBLE FOR A SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, HE MAY SIMULTANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE WITH THE PROVISION OF SECTION SEVENTY OF THIS CHAPTER, PROVIDED THAT THE MEMBER INDICATES ON THE APPLICATION FOR SERVICE RETIREMENT THAT SUCH APPLICATION IS FILED WITHOUT PREJUDICE TO THE APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT.

G. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SECTION SHALL APPLY TO CHIEF FIRE MARSHALS, ASSISTANT FIRE MARSHALS, DIVISION SUPERVISING FIRE MARSHALS, SUPERVISING FIRE MARSHALS, FIRE MARSHALS AND FIRE MARSHAL TRAINEES WHO WERE HIRED ON OR AFTER JULY TWENTY-SEVENTH, NINETEEN HUNDRED SEVENTY-SIX.

H. 1. (A) NOTWITHSTANDING ANY PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF ANY CONDITION OR IMPAIRMENT OF HEALTH IS CAUSED BY A QUALIFYING WORLD TRADE CENTER CONDITION AS DEFINED IN SECTION TWO OF THIS CHAPTER, IT SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH MEMBER'S OWN WILLFUL NEGLIGENCE, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

(B) THE COMPTROLLER IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH.

2. (A) NOTWITHSTANDING THE PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF A MEMBER WHO PARTICIPATED IN WORLD TRADE

CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS, AS DEFINED IN SECTION TWO OF THIS CHAPTER, AND SUBSEQUENTLY RETIRED ON A SERVICE RETIREMENT, AN ORDINARY DISABILITY RETIREMENT OR A PERFORMANCE OF DUTY DISABILITY RETIREMENT AND SUBSEQUENT TO SUCH RETIREMENT IS DETERMINED BY THE COMPTROLLER TO HAVE A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, UPON SUCH DETERMINATION BY THE COMPTROLLER IT SHALL BE PRESUMED THAT SUCH DISABILITY WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AS THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH MEMBER'S OWN WILLFUL NEGLIGENCE, AND THAT THE MEMBER WOULD HAVE BEEN PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE AND DISCHARGE OF DUTY OF THE POSITION FROM WHICH HE OR SHE RETIRED HAD THE CONDITION BEEN KNOWN AND FULLY DEVELOPED AT THE TIME OF THE MEMBER'S RETIREMENT, UNLESS THE CONTRARY IS PROVEN BY COMPETENT EVIDENCE.

(B) THE COMPTROLLER SHALL CONSIDER A RECLASSIFICATION OF THE MEMBER'S RETIREMENT AS AN ACCIDENTAL DISABILITY RETIREMENT EFFECTIVE AS OF THE DATE OF SUCH RECLASSIFICATION.

(C) SUCH MEMBER'S RETIREMENT OPTION SHALL NOT BE CHANGED AS A RESULT OF SUCH RECLASSIFICATION.

(D) THE MEMBER'S FORMER EMPLOYER AT THE TIME OF THE MEMBER'S RETIREMENT SHALL HAVE AN OPPORTUNITY TO BE HEARD ON THE MEMBER'S APPLICATION FOR RECLASSIFICATION BY THE COMPTROLLER ACCORDING TO PROCEDURES DEVELOPED BY THE COMPTROLLER.

(E) THE COMPTROLLER IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH.

I. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF A RETIREE WHO: (1) HAS MET THE CRITERIA OF SUBDIVISION H OF THIS SECTION AND RETIRED ON A SERVICE OR DISABILITY RETIREMENT, OR WOULD HAVE MET THE CRITERIA IF NOT ALREADY RETIRED ON AN ACCIDENTAL DISABILITY; AND (2) HAS NOT BEEN RETIRED FOR MORE THAN TWENTY-FIVE YEARS; AND (3) DIES FROM A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, AS DETERMINED BY THE APPLICABLE HEAD OF THE RETIREMENT SYSTEM OR APPLICABLE MEDICAL BOARD, THEN UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE, SUCH RETIREE SHALL BE DEEMED TO HAVE DIED AS A NATURAL AND PROXIMATE RESULT OF AN ACCIDENT SUSTAINED IN THE PERFORMANCE OF DUTY AND NOT AS A RESULT OF WILLFUL NEGLIGENCE ON HIS OR HER PART. SUCH RETIREE'S ELIGIBLE BENEFICIARY, AS SET FORTH IN SECTION SIX HUNDRED ONE OF THIS ARTICLE, SHALL BE ENTITLED TO AN ACCIDENTAL DEATH BENEFIT AS PROVIDED BY SECTION SIX HUNDRED SEVEN OF THIS ARTICLE, HOWEVER, FOR THE PURPOSES OF DETERMINING THE SALARY BASE UPON WHICH THE ACCIDENTAL DEATH BENEFIT IS CALCULATED, THE RETIREE SHALL BE DEEMED TO HAVE DIED ON THE DATE OF HIS OR HER RETIREMENT. UPON THE RETIREE'S DEATH, THE ELIGIBLE BENEFICIARY SHALL MAKE A WRITTEN APPLICATION TO THE HEAD OF THE RETIREMENT SYSTEM WITHIN THE TIME FOR FILING AN APPLICATION FOR AN ACCIDENTAL DEATH BENEFIT AS SET FORTH IN SECTION SIX HUNDRED SEVEN OF THIS ARTICLE REQUESTING CONVERSION OF SUCH RETIREE'S SERVICE OR DISABILITY RETIREMENT BENEFIT TO AN ACCIDENTAL DEATH BENEFIT. AT THE TIME OF SUCH CONVERSION, THE ELIGIBLE BENEFICIARY SHALL RELINQUISH ALL RIGHTS TO THE PROSPECTIVE BENEFITS PAYABLE UNDER THE SERVICE OR DISABILITY RETIREMENT BENEFIT, INCLUDING ANY POST-RETIREMENT DEATH BENEFITS, SINCE THE RETIREE'S DEATH. IF THE ELIGIBLE BENEFICIARY IS NOT THE ONLY BENEFICIARY RECEIVING OR ENTITLED TO RECEIVE A BENEFIT UNDER THE SERVICE OR DISABILITY RETIREMENT BENEFIT (INCLUDING, BUT NOT LIMITED TO, POST-RETIREMENT DEATH BENEFITS OR BENEFITS PAID OR PAYABLE PURSUANT TO THE RETIREE'S OPTION SELECTION), THE

ACCIDENTAL DEATH BENEFIT PAYMENTS TO THE ELIGIBLE BENEFICIARY WILL BE REDUCED BY ANY AMOUNTS PAID OR PAYABLE TO ANY OTHER BENEFICIARY.

J. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF A MEMBER WHO: (1) HAS MET THE CRITERIA OF SUBDIVISION H OF THIS SECTION; AND (2) DIES IN ACTIVE SERVICE FROM A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, AS DETERMINED BY THE APPLICABLE HEAD OF THE RETIREMENT SYSTEM OR APPLICABLE MEDICAL BOARD TO HAVE BEEN CAUSED BY SUCH MEMBER'S PARTICIPATION IN THE WORLD TRADE CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS, AS DEFINED IN SECTION TWO OF THIS CHAPTER, THEN UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE, SUCH MEMBER SHALL BE DEEMED TO HAVE DIED AS A NATURAL AND PROXIMATE RESULT OF AN ACCIDENT SUSTAINED IN THE PERFORMANCE OF DUTY AND NOT AS A RESULT OF WILLFUL NEGLIGENCE ON HIS OR HER PART. SUCH MEMBER'S ELIGIBLE BENEFICIARY, AS SET FORTH IN SECTION SIX HUNDRED ONE OF THIS ARTICLE, SHALL BE ENTITLED TO AN ACCIDENTAL DEATH BENEFIT PROVIDED HE OR SHE MAKES WRITTEN APPLICATION TO THE HEAD OF THE RETIREMENT SYSTEM WITHIN THE TIME FOR FILING AN APPLICATION FOR AN ACCIDENTAL DEATH BENEFIT AS SET FORTH IN SECTION SIX HUNDRED SEVEN OF THIS ARTICLE.

S 2. The amount specified in this section, or so much thereof as shall be sufficient to accomplish the purpose designated, is hereby appropriated and authorized to be paid as hereinafter provided, to the public officers and for the purposes specified, which amount shall be available for the state fiscal year beginning April 1, 2012.

MISCELLANEOUS -- ALL STATE DEPARTMENTS AND AGENCIES
GENERAL STATE CHARGES
STATE OPERATIONS 2012-13

GENERAL STATE CHARGES

General Fund
State Purposes Account

For the state's contribution to the employees' retirement system pension accumulation fund and the New York state public employees group life insurance plan, as required by section 25 of the retirement and social security law, to pay for the purposes of section 605-d of the retirement and social security law 52,000

S 3. This act shall take effect immediately; provided, however, that section two of this act shall be deemed to have been in full force and effect on and after April 1, 2012.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would grant Tier 3, 4 and 5 chief fire marshals, assistant fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees an accidental disability for injuries sustained in the performance of duty and the result of an accident, unless the contrary be proven by competent evidence. The benefit for an accidental disability would be 75% of final average salary less worker's compensation.

If this bill is enacted during the 2012 session, insofar as this bill would affect Nassau County, there will be an estimated increase of approximately $52,000 in the annual contributions for the fiscal year ending March 31, 2013.

These estimated costs are based on fifty-three (53) members having an annual salary for the fiscal year ending March 31, 2012 of approximately $5.5 million.

There would also be a cost for any other municipality which employs fire marshals, which would depend on the salaries of the affected fire marshals.

Summary of relevant resources:

Data: March 31, 2011 Actuarial Year End File with distributions of membership and other statistics displayed in the 2011 Report of the Actuary and 2011 Comprehensive Annual Financial Report.

Assumptions and Methods: 2010 and 2011 Annual Report to the Comptroller on Actuarial Assumptions, Codes Rules and Regulations of the State of New York: Audit and Control.

Market Assets and GASB Disclosures: March 31, 2011 New York State and Local Retirement System Financial Statements and Supplementary Information.

Valuations of Benefit Liabilities and Actuarial Assets: summarized in the 2011 Actuarial Valuations report.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated March 15, 2012 and intended for use only during the 2012 Legislative Session, is Fiscal Note No. 2012-90, prepared by the Actuary for the New York State and Local Employees' Retirement System.